

AMENDED IN ASSEMBLY JANUARY 25, 2010

AMENDED IN ASSEMBLY JANUARY 7, 2010

AMENDED IN ASSEMBLY JANUARY 4, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 973**

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**Introduced by Assembly Member Audra Strickland**

February 26, 2009

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An act to amend, repeal, and add Section 305.6 of the Welfare and Institutions Code, relating to minors.

### LEGISLATIVE COUNSEL'S DIGEST

AB 973, as amended, Audra Strickland. Minors: temporary custody.

Existing law authorizes a peace officer to take into temporary custody, without a warrant, a minor who is in a hospital if the release of the minor to a prospective adoptive parent poses an immediate danger to the minor's health or safety. However, existing law prohibits a peace officer from taking into custody, without a warrant, a newborn child who is in a hospital, who tested positive for illegal drugs or whose birth mother tested positive for illegal drugs, who is the subject of an adoption petition, and whose release to the prospective adoptive parents does not pose an immediate danger to him or her.

This bill, instead, would prohibit a peace officer from taking into custody, without a warrant, a newborn who is the subject of a proposed adoption. This bill would also allow the Health Facility Minor Release Report to be signed by a licensed adoption agency, and allow the release of the minor to the adoptive parent's authorized representative or a licensed adoptive agency, when it does not pose an immediate danger to the minor.

Existing law also requires the adoptive parent or parents or their representative to provide a copy of the Health Facility Minor Release Report and a copy of the petition for adoption to the local child protective services agency or to the peace officer who is at the hospital to take the minor into custody or allows a copy of an adoption placement agreement signed by the placing birth parent or parents and the prospective adoptive parents to be used in place of the Health Facility Minor Release Report.

This bill would instead require the prospective adoptive parent or parents or their representative or a representative of a licensed adoption agency to provide a fully executed copy of the Health Facility Minor Release Report and a written form signed by the prospective adoptive parent or parents or a representative of a licensed adoption agency that includes a declaration that the signer will immediately notify the county child welfare agency if the adoption plan is terminated, as provided.

This bill would provide that these changes are to remain in effect until January 1, 2015.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 305.6 of the Welfare and Institutions
- 2 Code is amended to read:
- 3 305.6. (a) Any peace officer may, without a warrant, take into
- 4 temporary custody a minor who is in a hospital if the release of
- 5 the minor to a prospective adoptive parent or a representative of
- 6 a licensed adoption agency poses an immediate danger to the
- 7 minor's health or safety.
- 8 (b) (1) Notwithstanding subdivision (a) and Section 305, a
- 9 peace officer may not, without a warrant, take into temporary
- 10 custody a minor who is in a hospital if all of the following
- 11 conditions exist:
- 12 (A) The minor is a newborn who tested positive for illegal drugs
- 13 or whose birth mother tested positive for illegal drugs.
- 14 (B) The minor is the subject of a proposed adoption and a Health
- 15 Facility Minor Release Report, prescribed by the department, has
- 16 been completed by the hospital, including the marking of the boxes
- 17 applicable to an independent adoption or agency adoption planning,
- 18 and signed by the placing birth parent or birth parents, as well as

1 either the prospective adoptive parent or parents or an authorized  
2 representative of a licensed adoption agency, prior to the discharge  
3 of the birth parent or the minor from the hospital. Prior to signing  
4 the Health Facility Minor Release Report, the birth parent or  
5 parents shall be given a notice written in at least 14-point pica  
6 type, containing substantially the following statements:

7 (i) That the Health Facility Minor Release Report does not  
8 constitute consent to adoption of the minor by the prospective  
9 adoptive parent or parents, or any other person.

10 (ii) That the Health Facility Minor Release Report does not  
11 constitute a relinquishment of parental rights for the purposes of  
12 adoption.

13 (iii) That the birth parent or parents or any person authorized  
14 by the birth parent or parents may reclaim the minor at any time  
15 from the prospective adoptive parent or parents or any other person  
16 to whom the minor was released by the hospital, as provided in  
17 Sections 8814.5, 8815, or 8700 of the Family Code.

18 This notice shall be signed by the birth parent or parents and  
19 attached to the Health Facility Minor Release Report, a copy of  
20 which shall be provided to the birth parent or parents by hospital  
21 personnel at the time the form is completed.

22 (C) The release of the minor to a prospective adoptive parent  
23 or parents or an authorized representative of a licensed adoption  
24 agency does not pose an immediate danger to the minor.

25 (D) An attorney or an adoption agency has provided  
26 documentation stating that he or she, or the agency, is representing  
27 the prospective adoptive parent or parents for purposes of the  
28 adoption. In the case of an independent adoption, as defined in  
29 Section 8524 of the Family Code, the attorney or adoption agency  
30 shall provide documentation stating that the prospective adoptive  
31 parent or parents have been informed that the child may be eligible  
32 for benefits provided pursuant to the Adoption Assistance Program,  
33 as set forth in Chapter 2.1 (commencing with Section 16115) of  
34 Part 4 of Division 9, only if, at the time the adoption request is  
35 filed, the child has met the requirements to receive federal  
36 supplemental security income benefits pursuant to Subchapter XVI  
37 (commencing with Section 1381) of Chapter 7 of Title 42 of the  
38 United States Code, as determined and documented by the federal  
39 Social Security Administration.

1 (E) The prospective adoptive parent or parents or their  
2 representative, or an authorized representative of a licensed  
3 adoption agency, provides all of the following to the peace officer  
4 who is at the hospital to take the minor into temporary custody:

5 (i) A fully executed copy of the Health Facility Minor Release  
6 Report.

7 (ii) A written form, developed by the department, signed by  
8 either the prospective adoptive parent or parents or a representative  
9 of the licensed adoption agency, which shall include all of the  
10 following:

11 (I) A statement that the minor is the subject of a proposed  
12 adoption.

13 (II) A declaration that the signer or signers will immediately  
14 notify the county child welfare agency pursuant to Section 11165.9  
15 of the Penal Code if the adoption plan is terminated for any reason,  
16 and will not release the minor to the birth parent or parents or any  
17 designee of the birth parent or parents until the county child welfare  
18 agency or local law enforcement agency completes an investigation  
19 and determines that release of the minor to the birth parent or  
20 parents or a designee of the birth parent or parents will not create  
21 an immediate risk to the health or safety of the minor.

22 (III) An agreement to provide a conformed copy of the adoption  
23 request to the county child welfare agency within five business  
24 days after filing.

25 (IV) The names, identifying information, and contact  
26 information for the minor, for each prospective adoptive parent,  
27 and for each birth parent, to the extent that information is known.  
28 In the case of an agency adoption where no prospective adoptive  
29 parent or parents are identified at the time of the minor's release  
30 from the hospital, the licensed adoption agency may provide the  
31 information as it pertains to the licensed or certified foster home  
32 into which the agency intends to place the minor.

33 (c) If the adoption plan for a minor who was released from the  
34 hospital pursuant to subdivision (b) is terminated for any reason,  
35 the prospective adoptive parent or parents or licensed adoption  
36 agency shall immediately notify the county child welfare agency.  
37 The prospective adoptive parent or parents or licensed adoption  
38 agency may not release the minor into the physical custody of the  
39 birth parent or parents, or any designee of the birth parent or  
40 parents, until the county child welfare agency or local law

1 enforcement agency completes an investigation and determines  
2 that release of the minor to the birth parent or parents or a designee  
3 of the birth parent or parents will not create an immediate risk to  
4 the health or safety of the minor.

5 (d) Nothing in this section is intended to create a duty that  
6 requires law enforcement to investigate the prospective adoptive  
7 parent or parents.

8 ~~(e) The department shall study the effects of the release of a~~  
9 ~~minor to a prospective adoptive parent or licensed adoption agency~~  
10 ~~under this section, particularly on the health and safety of the~~  
11 ~~minor, and shall report all of its findings to the Legislature on or~~  
12 ~~before January 1, 2014.~~

13 ~~(f)~~

14 (e) This section shall remain in effect only until January 1, 2015,  
15 and as of that date is repealed, unless a later enacted statute, that  
16 is enacted before January 1, 2015, deletes or extends that date.

17 SEC. 2. Section 305.6 is added to the Welfare and Institutions  
18 Code, to read:

19 305.6. (a) Any peace officer may, without a warrant, take into  
20 temporary custody a minor who is in a hospital if the release of  
21 the minor to a prospective adoptive parent poses an immediate  
22 danger to the minor's health or safety.

23 (b) (1) Notwithstanding subdivision (a) and Section 305, a  
24 peace officer may not, without a warrant, take into temporary  
25 custody a minor who is in a hospital if all of the following  
26 conditions exist:

27 (A) The minor is a newborn who tested positive for illegal drugs  
28 or whose birth mother tested positive for illegal drugs.

29 (B) The minor is the subject of a petition for adoption and a  
30 Health Facility Minor Release Report, prescribed by the  
31 department, has been completed by the hospital, including the  
32 marking of the boxes applicable to an independent adoption or  
33 agency adoption planning, and signed by the placing birth parent  
34 or birth parents and the prospective adoptive parent or parents,  
35 prior to the discharge of the birth parent or the minor from the  
36 hospital. Prior to signing the Health Facility Minor Release Report,  
37 the birth parent or birth parents shall be given a notice written in  
38 at least 14-point pica type, containing substantially the following  
39 statements:

1 (i) That the Health Facility Minor Release Report does not  
2 constitute consent to adoption of the minor by the prospective  
3 adoptive parent or parents, or any other prospective adoptive parent  
4 or parents.

5 (ii) That the Health Facility Minor Release Report does not  
6 constitute a relinquishment of parental rights for the purposes of  
7 adoption.

8 (iii) That the birth parent or birth parents or any person  
9 authorized by the birth parent or birth parents may reclaim the  
10 minor at any time from the prospective adoptive parent or parents  
11 or any other person to whom the minor was released by the  
12 hospital, until an adoption placement agreement or a relinquishment  
13 is signed by the birth parent or birth parents.

14 This notice shall be signed by the birth parent or birth parents  
15 and attached to the Health Facility Minor Release Report.

16 (C) The release of the minor to a prospective adoptive parent  
17 or parents does not pose an immediate danger to the minor.

18 (D) An attorney or an adoption agency has provided  
19 documentation stating that he or she, or the agency, is representing  
20 the prospective adoptive parent or parents for purposes of the  
21 adoption. In the case of an independent adoption, as defined in  
22 Section 8524 of the Family Code, the attorney or adoption agency  
23 shall provide documentation stating that the prospective adoptive  
24 parent or parents have been informed that the child may be eligible  
25 for benefits provided pursuant to the Adoption Assistance Program,  
26 as set forth in Chapter 2.1 (commencing with Section 16115) of  
27 Part 4 of Division 9, only if, at the time the petition is filed, the  
28 child has met the requirements to receive federal supplemental  
29 security income benefits pursuant to Subchapter XVI (commencing  
30 with Section 1381) of Chapter 7 of Title 42 of the United States  
31 Code, as determined and documented by the federal Social Security  
32 Administration.

33 (E) The prospective adoptive parent or parents or their  
34 representative provides a copy of the Health Facility Minor Release  
35 Report with the signed notice to the birth parent or birth parents  
36 as described in subparagraph (B) and a copy of the petition for  
37 adoption to the local child protective services agency or to the  
38 peace officer who is at the hospital to take the minor into temporary  
39 custody.

1 (2) Notwithstanding Section 305 or subdivision (a) of this  
2 section, a peace officer may not, without a warrant, take into  
3 temporary custody a minor who is in a hospital if all of the  
4 following conditions exist:

5 (A) The minor is a newborn who tested positive for illegal drugs  
6 or whose birth mother tested positive for illegal drugs.

7 (B) The minor is the subject of a petition for adoption and a  
8 prospective adoptive parent or prospective adoptive parents have  
9 been licensed to act as a foster parent or foster parents of the minor  
10 pending finalization of the petition for adoption.

11 (C) The release of the minor to the prospective adoptive parent  
12 or prospective adoptive parents does not pose an immediate danger  
13 to the minor.

14 (D) The prospective adoptive parent or parents or their  
15 representative provides a copy of the petition for adoption and  
16 documents evidencing licensure as a foster parent or foster parents  
17 to the local child protective services agency or to the peace officer  
18 who is at the hospital to take the minor into temporary custody.

19 (3) If at the time the minor is released to the custody of a  
20 prospective adoptive parent or parents or their representative  
21 pursuant to paragraph (1) or (2), the petition for adoption of the  
22 minor has not been filed with the court, the petition for adoption  
23 shall be filed within 15 calendar days of the date the birth parent  
24 was released from the hospital.

25 (4) A copy of an adoption placement agreement signed by the  
26 placing birth parent or birth parents and the prospective adoptive  
27 parent or parents may be used in place of the Health Facility Minor  
28 Release Report and notice to the birth parent or birth parents as  
29 described in subparagraph (B) of paragraph (1).

30 (c) Nothing in this section is intended to create a duty that  
31 requires law enforcement to investigate the prospective adoptive  
32 parent or parents.

33 (d) This section shall become operative on January 1, 2015.